

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

State of Oklahoma, et al.,)	Case No. 4:05-cv-00329-GKF-PJC
)	
Plaintiffs,)	
)	
vs.)	THE CARGILL DEFENDANTS’ REPLY
)	IN SUPPORT OF THEIR SEPARATE
Tyson Foods, Inc., et al.,)	MOTION IN LIMINE (DKT. NO. 2413)
)	
Defendants.)	
)	

Defendants Cargill, Inc. and Cargill Turkey Production, LLC (“CTP”) (together, “the Cargill Defendants”) offer this Reply in support of their motion in limine seeking to exclude evidence concerning the Rocco company (Dkt. No. 2413) and in response to Plaintiffs’ opposition to the same (Dkt. No. 2501).

Cargill began turkey operations in Arkansas in 1975.¹ (E.g., Dkt. No. 2200-2: Maupin Dep. at 288:3 – 290:12.) In April 2001, Cargill purchased the stock of Rocco Enterprises, Inc.² Cargill also retained some Rocco employees, including Mr. Maupin and Steve Willardsen, both of whom are currently CTP officers.³ Before the Rocco purchase, although Cargill did not utilize a specific best practices manual for poultry operations, the company nonetheless had several general environmental manuals and policies in place. (Contra Pls.’ Resp. at 3: Dkt. No.

¹ Plaintiffs are mistaken in asserting that Cargill’s Arkansas poultry operations began in 1964. (See Pls.’ Opp’n Rocco Mot. in Limine at 2, 3.)

² The Cargill Defendants’ original motion suggested that the Rocco transaction was an asset purchase. Based on further research, the Cargill Defendants have now concluded that the transaction was in fact a stock purchase.

³ At the time of the Rocco purchase, Mr. Maupin was not an officer of either company, but an environmental affairs manager. (Dkt. No. 2079-5: Maupin Dep. at 45:3 – 46:16.) Later, Mr. Maupin was promoted to his current position as CTP’s Vice President of Agricultural

2501.) Because documents and testimony concerning the Rocco corporation have limited relevance and carry other foundation and hearsay problems, among others, the Court should grant the Cargill Defendants' motion to prevent the State's unfettered use of this evidence.

In opposing the Cargill Defendants' motion, Plaintiffs seem to contend that whatever corporate "knowledge" was **ever** generally held by the Rocco entity, Cargill necessarily acquired **all** of it stretching back in time once it purchased Rocco's stock and retained some Rocco employees. (See Dkt. No. 2501 at 1-5 (arguing, for example, that "Rocco's knowledge was retained even after its acquisition by Cargill and such knowledge is imputable to Cargill.")) In other words, Plaintiffs seem to want this Court to hold that Cargill constructively "knew" at all points in time whatever Rocco "knew" at that same point in time **even before** Cargill purchased Rocco's stock and retained some of its employees in 2001.

Plaintiffs cite no law to support this novel extension of basic corporate law norms. Plaintiffs' response provides legal support for various uncontroversial points, including (for instance) that "[a] corporation can acquire knowledge only through its officers and agents," and that "the corporation is changed with such knowledge even though the officer or agent does not in fact communicate his knowledge to the corporation." (Id. at 4 (quoting Operators Royalty & Producing Co. v. Greene, 49 P2d 499, 502 (Okla. 1935).) For the critical points in their argument, however, Plaintiffs rely on veil-piercing cases that rested their holdings on allegations of fraud that are entirely absent here. (See id. at 4, citing, e.g., In re Crown Vantage, Inc., 2004 WL 1635543, 2004 U.S. Dist. LEXIS 13810 (N.D. Cal. 2004).) The court in Crown Vantage, for instance, pierced the corporate veil to impute knowledge of fraud from an acquired

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Operations. (Id. at 6:16-22.) Plaintiffs mistake the timeframe in which Mr. Maupin worked for
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company's single shareholder to the purchasing company. 2004 U.S. Dist. LEXIS 13810, at *7-10, 19-20 (involving a series of fraudulent transactions and schemes); see also Campen v. Exec. House Hotel, Inc., 434 N.E.2d 511, 517 (Ill. App. Ct. 1st Dist. 1982) (cited by Plaintiffs at 4, upholding district court's imputation sanction against a company who purposefully hid the existence of a responsible third party entity throughout pretrial); Operators Royalty, 49 P.2d at 502 (cited by Plaintiffs at 4, regarding fraudulent conveyances). In contrast, here, Plaintiffs have never even alleged fraud or veil-piercing theories against Cargill. Indeed, such an allegation would be absurd; the entire Rocco transaction took place years before the present suit even commenced, and the transaction itself has nothing to do with the merits of Plaintiffs' present claims against the Cargill Defendants. The State's authority on this point is entirely inapposite.

In short, there is no reason to broadly ascribe to Cargill any corporate knowledge of Rocco's predating Cargill's purchase of Rocco. And unless they are offered to show corporate notice or knowledge (and if the materials are beyond the personal knowledge of a witness), such old Rocco documents will necessarily fail on hearsay and foundation grounds. Further, if such evidence is offered, Cargill would need to offer substantial evidence concerning the complicated corporate purchase to provide the full context necessary for the jury to evaluate any arguable link between Rocco's corporate knowledge and that of the Cargill Defendants. The marginal probative value of this Rocco information is substantially outweighed by the danger that the evidence would confuse and mislead the factfinder and waste the Court and jury's time. Thus, the Court should exclude such evidence.

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or with Rocco; it was actually approximately 18 years. (Id. at 11:5-10, 18:16-21.)

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CERTIFICATE OF SERVICE

I certify that on the 4th day of September, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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